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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(El Dorado)

THE PEOPLE,

Plaintiff and Respondent,

v.

DUSTIN GREGORY HEIER,

Defendant and Appellant.

C072531

(Super. Ct. No. P09CRF0439)

A jury found defendant Dustin Gregory Heier guilty of elder abuse and assault with a deadly weapon in the stabbing of his housemate; and guilty of misdemeanor receipt of stolen property. It also found true allegations defendant inflicted great bodily injury on the victim and personally used a knife in the attack. Defendant admitted one prior prison term enhancement allegation. (Pen. Code,¹ § 667.5, subd. (b).)

¹ Undesignated section references are to the Penal Code.

On appeal, defendant contends the trial court failed to advise him of his *Boykin-Tahl*² rights prior to accepting his enhancement admission. We agree. Therefore, we reverse the prior prison term finding as not supported by a valid admission, vacate defendant's sentence, and remand the matter to the trial court for retrial of the enhancement and resentencing.

FACTS

We recite only the facts relevant to defendant's claim of *Boykin-Tahl* error.

The complaint alleged defendant had served a prior prison term, pursuant to section 667.5, subdivision (b). Trial on the prior prison term allegation was bifurcated from the jury trial.

At the hearing on the prior prison term allegation following the jury verdicts, the following exchange occurred:

“THE COURT: This would be the conviction in El Dorado County Superior Court on December 3rd, 2001, in Docket Number P01CRF0268 for the violation of 245(a)(1). Is that correct?

“[Prosecutor]: That's correct.

“[Defense Counsel]: Correct.

“THE COURT: And Mr. Heier is going to be admitting that at this time?

“[Defense Counsel]: Yes.

“THE COURT: Mr. Heier, you understand that there is an allegation that you suffered a prior prison commitment? I've just read the date and the case number of that commitment. And do you admit that prior prison conviction?

“THE DEFENDANT: Yes, Your honor.

² *Boykin v. Alabama* (1969) 395 U.S. 238 [23 L.Ed.2d 274]; *In re Tahl* (1969) 1 Cal.3d 122.

“THE COURT: All right. The Court will accept your admission that your freely, knowingly and intelligently, voluntarily made. I’ll include that in the information to be submitted to probation for the report.

“[Prosecutor]: Thank you.”

The court subsequently sentenced defendant to 11 years in prison, imposing a one-year enhancement for defendant’s having served a prior prison term.

DISCUSSION

Defendant contends the trial court failed to advise him of his *Boykin-Tahl* rights prior to accepting his admission he served a prior prison term, thereby rendering his admission invalid. The People concede the error, and we agree.

A criminal defendant’s plea of guilty amounts to a waiver of three constitutional rights: (1) the privilege against self-incrimination; (2) the right to a trial by jury; and (3) the right to confront one’s accusers. Accordingly, the trial court must advise a defendant of these rights before taking such a plea. (*Boykin v. Alabama, supra*, 395 U.S. at pp. 242-243 [23 L.Ed.2d at p. 279]; *In re Tahl, supra*, 1 Cal.3d at p. 132 [“each of the three rights mentioned -- self-incrimination, confrontation, and jury trial -- must be specifically and expressly enumerated for the benefit of and waived by the accused prior to acceptance of his guilty plea”].) For a waiver of these constitutional rights to be valid, it must be knowing, intelligent, and voluntary. (See *Boykin*, 395 U.S. at p. 244 [23 L.Ed.2d at p. 280].)

In California, the *Boykin-Tahl* advisements must also be given before the trial court may accept a criminal defendant’s admission that he or she has prior felony convictions. (*In re Yurko* (1974) 10 Cal.3d 857, 863.) “As an accused is entitled to a trial on the factual issues raised by a denial of the allegation of prior convictions, an admission of the truth of the allegation necessitates a waiver of the same constitutional rights as in the case of a plea of guilty.” (*Ibid.*) The trial court must also advise such a

defendant of “the full penal effect of a finding of the truth of an allegation of prior convictions.” (*Id.* at p. 865.)

The lack of express advisement, and waiver, of each of the *Boykin-Tahl* rights constitutes reversible error unless “the record affirmatively shows that [the admission] is voluntary and intelligent under the totality of the circumstances.” (*People v. Howard* (1992) 1 Cal.4th 1132, 1175.)

In *People v. Mosby* (2004) 33 Cal.4th 353, our Supreme Court drew a distinction between “silent-record cases” and cases of “[i]ncomplete advisement of *Boykin-Tahl* rights.” (*Mosby*, at pp. 361-363.) In the former situation, the record reveals “no express advisement or waiver of the *Boykin-Tahl* rights before a defendant’s admission of a prior conviction.” (*Mosby*, at p. 361.) In such cases, “we cannot infer that in admitting the prior the defendant has knowingly and intelligently waived [the right to trial to determine the truth of the prior conviction allegation] as well as the associated rights to silence and confrontation of witnesses.” (*Id.* at p. 362; see *People v. Sifuentes* (2011) 195 Cal.App.4th 1410, 1420-1421.)

The People concede that in this case there were no advisements given, nor any waivers taken prior to the trial court’s acceptance of defendant’s admission he served the prior prison term. In this silent-record case, we cannot infer that defendant’s admission of the enhancement allegation was knowing or intelligent. (Cf. *People v. Mosby, supra*, 33 Cal.4th at p. 362.)

This error compels that we reverse the trial court’s prior prison term finding and vacate defendant’s sentence. Remand for retrial of the prior prison term enhancement allegation is permissible. (See *People v. Sifuentes, supra*, 195 Cal.App.4th at pp. 1421-1422.)

DISPOSITION

Defendant's prior prison term enhancement finding is reversed, his sentence is vacated, and the matter is remanded to the trial court for retrial of the prior prison term allegation and resentencing. The judgment is otherwise affirmed.

ROBIE, J.

We concur:

NICHOLSON, Acting P. J.

DUARTE, J.